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14 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA and)
16 STATE OF CALIFORNIA)
DEPARTMENT OF TOXIC)
17 SUBSTANCES CONTROL,)
18 Plaintiffs,)
19 v.)
20 UNION PACIFIC RAILROAD CO.,)
21 Defendant.)
22

Civil No. _____

23 COMPLAINT

24 The United States of America, by the authority of the Attorney General of the
25 United States and through the undersigned attorneys, acting at the request of the
26 Administrator of the United States Environmental Protection Agency ("EPA"), and the
27 State of California Department of Toxic Substances Control ("DTSC") hereby file this
28 Complaint and allege as follows:

1 **PRELIMINARY STATEMENT OF THE CASE**

2 1. This is a civil action under Sections 106(a), 107(a), and 113 of the
3 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as
4 amended ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607(a), and 9613, for recovery of costs
5 and injunctive and declaratory relief against the above-named Defendant. The United
6 States and DTSC seek injunctive relief requiring cleanup of the Site and to recover costs
7 that have been incurred and will be incurred in connection with the release and threatened
8 release of hazardous substances at the McCormick & Baxter Superfund Site ("Site"),
9 located at 1214 West Washington Street, Stockton, San Joaquin County, California.

10 **JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the subject matter of and the parties to this
12 action pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a),
13 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

14 3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42
15 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (c), because the releases or threatened
16 releases of hazardous substances that give rise to the United States' and DTSC's claims
17 occurred in this district.

18 **FACTUAL ALLEGATIONS**

19 **THE SITE**

20 4. The McCormick & Baxter Superfund Site is a former wood treatment facility
21 occupying approximately 29 acres. It is bordered by Old Mormon Slough to the north,
22 Interstate 5 to the east, Washington Street to the south, and an industrial facility to the
23 west. Old Mormon Slough connects to the Stockton Deepwater Channel on the San
24 Joaquin River.

25 5. From 1946 to 1991, McCormick & Baxter Creosoting Company operated a
26 wood treating company at the Site. McCormick & Baxter used various chemical
27 preservatives to treat wood during its operational history, including creosote,
28 pentachlorophenol ("PCP"), arsenic, chromium, copper, and zinc.

1 6. McCormick & Baxter used large pressure vessels, or retorts, to impregnate
2 wood with preservative solutions. Treated wood was removed from the retorts and
3 allowed to dry in storage areas throughout the Site.

4 7. Waste preservative was stored in oily waste ponds adjacent to Old Mormon
5 Slough from 1942 to 1981. Site drainage was uncontrolled until 1978. Prior to that date,
6 stormwater from the Site discharged directly into Old Mormon Slough and New Mormon
7 Slough.

8 UNION PACIFIC'S CONNECTIONS TO THE SITE

9 8. Defendant Union Pacific owns approximately eight acres of the Site. Union
10 Pacific acquired this land ("SP parcel") through the merger of Southern Pacific
11 Transportation Company ("SP") and Union Pacific in 1998. SP owned the SP parcel
12 prior to the merger and leased it to McCormick & Baxter. McCormick & Baxter used the
13 SP parcel to store treated and untreated wood.

14 9. Western Pacific Railroad Company ("WP") was one of McCormick &
15 Baxter's customers. WP supplied wood and preservatives to McCormick & Baxter,
16 which treated the wood and allowed it to "season" at the Site. During this process, WP
17 retained ownership of the wood and preservatives. WP also provided specifications for
18 treating the wood.

19 10. The preservatives used to treat WP's wood include creosote and Arban.
20 Creosote, which contains carcinogenic polycyclic aromatic hydrocarbons (cPAHs), is a
21 hazardous substance within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §
22 9601(14). Arban contains phosphorus, which is also a hazardous substance under
23 CERCLA. The wood treatment process generated wastes containing hazardous
24 substances.

25 11. In 1982, WP became a wholly owned subsidiary of Defendant Union
26 Pacific's wholly owned subsidiary, Pacific Subsidiary, Inc. In 1987, WP merged into
27 Pacific Subsidiary, Inc. Pacific Subsidiary, Inc. then merged into Union Pacific.

RESPONSE ACTIONS AT THE SITE

12. In 1978, a fish kill at New Mormon Slough and the Stockton Deepwater Channel was traced to the McCormick & Baxter facility. In response to the fish kill, the California Regional Water Quality Control Board ("RWQCB") adopted a Cleanup and Abatement Order. Pursuant to the Order, McCormick & Baxter installed a stormwater collection system and perimeter levees to prevent further stormwater discharges from the Site. The stormwater collection system is currently operated and maintained by EPA.

13. In 1984, McCormick & Baxter entered into an agreement with the Toxic Substances Control Division of the California Department of Health Services, DTSC's predecessor agency, and the RWQCB to investigate and clean up contamination at the Site. McCormick & Baxter conducted soil and groundwater sampling and took other initial steps to address contamination, but filed for bankruptcy protection in 1988 and discontinued all environmental response actions in 1991.

14. EPA became lead agency for the Site in 1992 and listed the Site on the National Priorities List in October 1992. EPA conducted several phases of removal actions to stabilize Site conditions, improve Site security, and demolish and dispose of above-ground structures and equipment.

15. EPA carried out a Remedial Investigation of the Site, in which EPA conducted soil, groundwater, and sediment sampling; well installation; aquifer testing; human health risk assessment; ecological risk assessment; and other site investigation activities.

16. EPA has identified PCP, cPAHs, arsenic, dioxins/furans, and naphthalene as chemicals of concern ("COCs") at the Site. These chemicals are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). COCs have been found in soils throughout the Site, including on the SP parcel. COCs have also been found in groundwater at the Site, and in sediments in Old Mormon Slough.

17. On March 31, 1999, EPA issued a Record of Decision ("ROD") for remedial action at the Site. In the ROD, EPA selected a permanent remedy to address vadose zone

1 soil contamination and sediment and surface water contamination, and an interim remedy
2 to address groundwater contamination.

3 18. EPA and DTSC have incurred response costs conducting response actions at
4 the Site. Response actions are ongoing, and EPA and DTSC expect to incur additional
5 costs in the future.

6 **FIRST CLAIM FOR RELIEF**

7 19. Paragraphs 1 through 18 are realleged and incorporated herein by reference.

8 20. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42
9 U.S.C. § 9601(9).

10 21. There has been a "release" and threatened "release," as defined by Section
11 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances at or from the Site.

12 22. As a result of the release and threatened release of hazardous substances at or
13 from the Site, Plaintiffs United States and DTSC have incurred "response" costs, as that
14 term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

15 23. The response actions taken by Plaintiffs in connection with the Site and, thus,
16 the response costs incurred, are not inconsistent with the National Contingency Plan, 40
17 C.F.R. Part 300.

18 24. The above-named Defendant is a "person" within the meaning of Section
19 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20 25. Defendant is within the classes of persons described in Section 107(a) of
21 CERCLA, 42 U.S.C. § 9607(a).

22 26. Defendant is liable to the United States and DTSC for costs incurred or to be
23 incurred by the United States and DTSC in connection with the Site, for which the United
24 States and DTSC seek judgment, including prejudgment interest. Pursuant to Section
25 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), a declaratory judgment on liability should
26 be entered against Defendant that will be binding in any subsequent action or actions
27 seeking to recover further response costs or damages incurred by the United States and
28 DTSC in connection with the Site.

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1 4. Grant such other relief as the Court deems appropriate.

2 Respectfully submitted,

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